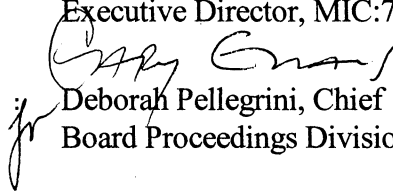


M e m o r a n d u m

To : Mr. Ramon Hirsig
Executive Director, MIC:73

From :  Deborah Pellegrini, Chief
Board Proceedings Division, MIC:81

Date: June 10, 2004

Subject : Chief Counsel Matters, June 30, 2004
Property Tax Rule 136, *Limited Liability Companies as Qualifying Organizations for the Welfare Exemption*

I would like to request your approval to submit Property Tax Rule 136, *Limited Liability Companies as Qualifying Organizations for the Welfare Exemption*, to the Board for approval at the June 30, 2004 Board Meeting.


Background

In response to public comment, the Board approved changes to the published version of the proposed Property Tax Rule 136, *Limited Liability Companies as Qualifying Organizations for the Welfare Exemption*, on May 25, 2004.

The changed version of the rule will be placed in the rulemaking on July 11, 2004 and mailed to interested parties that commented orally or in writing or asked to be informed of such revisions. The rule will be ready for the June 6, 2004 Chief Counsel Matters agenda.

DP:dgo
Attachment

Approved:



Ramon Hirsig,
Executive Director

REGULATION HISTORY

TYPE OF REGULATION: Property Tax

REGULATION: 136

TITLE: Limited Liability Companies as Qualifying Organizations for the Welfare Exemption

PREPARATION: Kristine Cazadd/Mary Ann Alonzo

LEGAL CONTACT: Kristine Cazadd/ Mary Ann Alonzo

New Rule 136, Property Tax Rule 136, *Limited Liability Companies as Qualifying Organizations for the Welfare Exemption*, has been proposed in order to clarify that real property owned by a nonprofit limited liability company may qualify for the property tax welfare exemption.

REGULATION HISTORY

June 30, 2004: Scheduled for Board adoption on Chief Counsel Matters.
June 11, 2004: 15-day Interested Parties letter e-mailed and mailed.
May 25, 2004: Board adopted Rule with an amendment to the published text. Rule referred the to the 15-day file. (Vote 5-0)
May 25, 2004: Public hearing.
April 16, 2004: Notice of Rescheduled public hearing e-mailed and mailed to interested parties.
March 23, 2004: Public hearing postponed.
January 31, 2004: 45-Day public comment begins.
January 30, 2004: Notice of public hearing published in California Regulatory Notice Register, Register 2004, No. 5-Z, e-mailed and mailed to interested parties.
October 15, 2003: Chief Counsel Matters the Board authorized to publication. (Vote 5-0)
September 24, 2003: Chief Counsel Matters for Board's consideration regarding the adoption of a new rule. (No vote.)
June 25, 2003: Chief Counsel Matters for Board's consideration regarding the adoption of a new rule. (Vote 5-0)
May 28, 2003: Chief Counsel Matters for Board's consideration regarding the adoption of a new rule. (No vote.)
May 9, 2003: Honorable Chairwomen Carole Midgen received a petition to adopt new rule submitted by Ingrid Mittermaier, Esq., Silk, Adler and Colvin.

Sponsor: Ingrid Mittermaier, Esq., Silk, Adler and Colvin

Support: None

Oppose: None

Item J11
06/30/04



STATE OF CALIFORNIA

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Fourth District, Los Angeles

STEVE WESTLY
State Controller, Sacramento

RAMON J. HIRSIG
Executive Director

No. 2004/038

June 11, 2004

TO COUNTY ASSESSORS,
COUNTY COUNSELS, AND
OTHER INTERESTED PARTIES

CALIFORNIA CODE OF REGULATIONS
TITLE 18. PUBLIC REVENUES

PROPERTY TAX RULE 136
LIMITED LIABILITY COMPANIES AS QUALIFYING ORGANIZATIONS FOR THE WELFARE
EXEMPTION

NOTICE OF PROPOSED RULE AMENDMENTS FOR THE 15-DAY PUBLIC COMMENT
PERIOD

The State Board of Equalization held a public hearing on May 25, 2004, on proposed Property Tax Rule 136, *Limited Liability Companies as Qualifying Organizations for the Welfare Exemption*. During the public comment period prior to hearing, the Board received a comment proposing amendment of the proposed rule to include government entities as "qualifying organizations". In accordance with Government Code section 11346.8, subdivision (c), the Board provides this notice of the fifteen-day period for any comments in response to the public comment, recommending changes to the published version of the rule as follows:

- Renumber subsection (b) as (b)(1) and add a new subsection (b)(2) to read:
- (b)(2) Qualifying Organization. A qualifying organization is also a government entity that is exempt from property taxation under section 3 of Article XIII of the California Constitution, as to property owned by the state under subdivision (a), or as to property owned by a local government under subdivision (b), or as to property used exclusively for public schools, community colleges, state colleges and state universities. A limited liability company is a qualifying organization if one or more of its members is a government entity, as specified, and all other members are exempt under section 501(c) (3) of the Internal Revenue Code or under section 23701d of the Revenue and Taxation Code and qualify for exemption under section 214 of the Revenue and Taxation Code.
- Amendment to section (c) (3): The organizational language shall require that each member of the limited liability company be a qualifying organization under section 214 and exempt under section 501(c)(3) of the Internal Revenue Code or section 23701d of the Revenue and Taxation Code. ,as specified in subsections (b)(1) and (b)(2) of this rule.

Amendment to section (f) is necessary because Senate Bill 1062 (Stats. 2003, Ch. 471, in effect January 1, 2004) changed welfare exemption claim filing requirements. The amendment to Section (f) in strikeout and under line format, reads as follows: The limited liability company shall file with the Board a copy ~~county assessor, duplicate copies~~ of certified Articles of Organization or the equivalent legally recognized formative document required under the laws of the jurisdiction where the entity is formed, and any certified amendments and restatements.

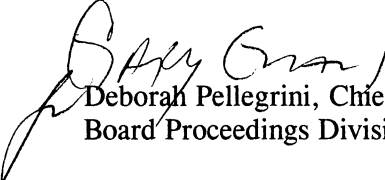
Attached is a revised version of Rule 136, in strikeout and underline format, with language added to the rule in double underscore and deleted language identified by strikeout.

The revised version of Rule 136 is being placed in the rulemaking file and mailed today to interested parties that commented orally or, in writing, or who asked to be informed of such revisions. If you wish to review the rulemaking file, it is available for your inspection at the State Board of Equalization, 450 N Street, Sacramento, California.

Questions regarding the revisions to the proposed rule should be directed to: Ms. Mary Ann Alonzo, Senior Tax Counsel, at the State Board of Equalization, P.O. Box 942879, 450 N Street, MIC:82, Sacramento, CA 94279-0082. Telephone: (916) 324-1392; FAX (916) 323-3387, e-mail MaryAnn.Alonzo@boe.ca.gov.

The Board will consider comments solely concerning the proposed revisions only if received by **June 27, 2004**. This matter will be placed on the Board's meeting consent agenda, to be held in Sacramento, California, on June 30, 2004, for the Board's consideration. Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, email Diane.Olson@boe.ca.gov or to Ms. Joann Richmond, Property Taxes Analyst, telephone (916) 322-1931, email Joann.Richmond@boe.ca.gov or by mail to the State Board of Equalization, Attn: Diane Olson or Joann Richmond, MIC:80, P.O. Box 942879, Sacramento, CA 94279-0080.

Sincerely,


Deborah Pellegrini, Chief
Board Proceedings Division

DP:dgo
Enclosures

RULE 136

LIMITED LIABILITY COMPANIES AS QUALIFYING ORGANIZATIONS FOR THE WELFARE EXEMPTION

(a) A limited liability company may be a qualifying entity for welfare exemption purposes, if it is wholly owned by a qualifying organization or organizations and if it meets specific organizational and operating requirements.

(b) (1) Qualifying Organization. A qualifying organization is an organization that is exempt under section 501(c)(3) of the Internal Revenue Code or under section 23701d of the Revenue and Taxation Code and that qualifies for exemption under section 214 of the Revenue and Taxation Code. A limited liability company is a qualifying organization if all its owner organization(s) (referred to as members) are exempt under section 501(c)(3) of the Internal Revenue Code or under section 23701d of the Revenue and Taxation Code and qualify for exemption under section 214 of the Revenue and Taxation Code. Each member shall have a valid, unrevoked letter from the Internal Revenue Service or the Franchise Tax Board, stating that it qualifies as an exempt organization under section 501(c)(3) of the Internal Revenue Code or under section 23701d of the Revenue and Taxation Code.

(b)(2) Qualifying Organization. A qualifying organization is also a government entity that is exempt from property taxation under section 3 of Article XIII of the California Constitution, as to property owned by the state under subdivision (a), or as to property owned by a local government under subdivision (b), or as to property used exclusively for public schools, community colleges, state colleges and state universities. A limited liability company is a qualifying organization if one or more of its members is a government entity, as specified, and all other members are exempt under section 501(c) (3) of the Internal Revenue Code or under section 23701d of the Revenue and Taxation Code and qualify for exemption under section 214 of the Revenue and Taxation Code.

(c) Organizational Requirements. A limited liability company wholly owned by qualifying organization(s) may satisfy the organizational requirements for purposes of the exemption, if its articles of organization or the equivalent legally recognized formative document under the laws of the jurisdiction where the entity is formed meets all of the following requirements:

- (1) A specific statement shall be included which limits the activities of the limited liability company to one or more exempt purposes, as specified in section 214. This requirement may be satisfied by a clause stating that the limited liability company is organized and operated exclusively for one or more exempt purpose(s) as specified in section 214 [religious, hospital, scientific or charitable].
- (2) The organizational language shall specify that the limited liability company is operated exclusively to further the exempt purpose(s) as specified in section 214, of its member(s).
- (3) The organizational language shall require that each member of the limited liability company be a qualifying organization under section 214 and exempt under section 501(c)(3) of the Internal Revenue Code or section 23701d of the Revenue and Taxation Code, as specified in subsections (b)(1) and (b)(2) of this rule.
- (4) The organizational language shall prohibit any direct or indirect transfer of any membership interest in the limited liability company to any nonqualified person or entity.

- (5) The organizational language shall provide an acceptable dedication clause. This requirement may be satisfied by a clause that irrevocably dedicates the property to one or more of the exempt purposes, as specified in sections 214 and 214.01.
- (6) The organizational language shall provide an acceptable dissolution clause. This requirement may be satisfied by a clause, which specifies that upon dissolution, all assets shall be distributed to an organization(s) organized and operated exclusively for exempt purposes, as specified in section 214, and which has established its tax exempt status under section 501(c)(3) of the Internal Revenue Code, or under section 23701d of the Revenue and Taxation Code.
- (7) The organizational language shall require that any amendments to the limited liability company's articles of organization or the equivalent legally recognized formative document under the laws of the jurisdiction where the entity is formed and to the operating agreement, be consistent with section 214.
- (8) The organizational language shall prohibit the limited liability company from merging with, or converting into, a for-profit entity.
- (9) The organizational language shall require that the limited liability company not distribute any assets to members who cease to be organizations described in section 214.
- (d) The limited liability company shall represent that its articles of organization are consistent with state law governing limited liability companies and are enforceable at law and in equity.
- (e) Operating Requirements. A limited liability company wholly owned by qualifying organization(s) may satisfy the operational requirements for purposes of this exemption, by operating in accordance with its articles of organization or the equivalent legally recognized formative document under the laws of the jurisdiction where the entity is formed.
- (f) The limited liability company shall file with the Board a copy ~~county assessor, duplicate~~ copies of certified Articles of Organization or the equivalent legally recognized formative document required under the laws of the jurisdiction where the entity is formed, and any certified amendments and restatements.
- (g) In the event that a member of the limited liability company ceases to be a qualifying welfare organization, as described in section 214, the limited liability company shall report this information to the assessor and the Board no later than the next annual filing deadline for the welfare exemption. Such event will serve to disqualify the limited liability company and its property from the welfare exemption.

Authority: Section 15606(c), Government Code.

Reference: Sections 214, 214.01, 214.02, 214.1, 214.2, 214.5, 214.8, 214.14 254, 254.5, 254.6, 255, 261, 270, 271, 75.21 and 75.22 of the Revenue and Taxation Code; Article XIII, Sections 4(b) and 5, California Constitution.

Maa:lg

Drafts/Maa/Rule 136/01-09-04 Rule136 text.doc



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STEVE WESTLY
State Controller, Sacramento

RAMON J. HIRSIG
Executive Director
No. 2004/020

April 16, 2004

**STATE BOARD OF EQUALIZATION
NOTICE OF RESCHEDULED PUBLIC HEARING**

**PROPERTY TAX RULE 136, LIMITED LIABILITY COMPANIES AS QUALIFYING
ORGANIZATIONS FOR THE WELFARE EXEMPTION**

BY NOTICE dated January 30, 2004 and published in the January 30, 2004 California Regulatory Notice Register 2004, Number 5-Z, the State Board of Equalization, announced that it would conduct a public hearing on March 23, 2004, to consider the proposed adoption of Rule 136, Limited Liability companies as Qualifying Organizations for the Welfare Exemption, in Title 18, Division 1 of the California Code of Regulations. A decision was made to postpone the public hearing.

A rescheduled public hearing on the proposed regulation will be held on May 25, 2004, in Room 121, 450 N Street, Sacramento, CA at 9:30 a.m., or as soon thereafter as the matter may be heard.

The State Board proposes to adopt Rule 136 to interpret and clarify that organizations eligible for the welfare exemption from property taxation include nonprofit tax-exempt limited liability companies wholly owned by qualified organizations and meeting all the exemption law requirements in section 214 et. seq. of the Revenue and Taxation Code. Questions regarding the substance of the proposed rule should be directed to: Ms. Mary Ann Alonzo, Senior Tax Counsel, at the State Board of Equalization, P.O. Box 942879, 450 N Street, MIC:82, Sacramento, CA 94279-0082, telephone: (916) 324-1392; FAX (916) 323-3387, e-mail MaryAnn.Alonzo@boe.ca.gov.

Written comments for the Board's consideration, requests to present testimony, or to bring witnesses to the public hearing, and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail Diane.Olson@boe.ca.gov, or Ms. Joann Richmond, Property Taxes Analyst, telephone (916) 322-1931, e-mail Joann.Richmond@boe.ca.gov, or by mail to the State Board of Equalization, Attn: Diane Olson or Joan Richmond, MIC: 80, P.O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080.

STATE BOARD OF EQUALIZATION

Deborah Pellegrini, Chief
Board Proceedings Division



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Fourth District, Los Angeles

STEVE WESTLY
State Controller, Sacramento

TIMOTHY W. BOYER
Interim Executive Director

LTA NO. 2004-007

January 30, 2004

TO COUNTY ASSESSORS,
COUNTY COUNSELS, AND
OTHER INTERESTED PARTIES:

**NOTICE OF PROPOSED REGULATORY ACTION
BY THE
STATE BOARD OF EQUALIZATION**

**ADOPTION OF PROPERTY TAX RULE 136 – LIMITED LIABILITY COMPANIES AS
QUALIFYING ORGANIZATIONS FOR THE WELFARE EXEMPTION**

PUBLIC HEARING: TUESDAY, MARCH 23, 2004 AT 9:30 A.M.

NOTICE IS HEREBY GIVEN:

The State Board of Equalization, pursuant to the authority vested in the Board by section 15606, subdivision (c) of the Government Code, proposes to adopt Rule 136, Limited Liability Companies as Qualifying Organizations for the Welfare Exemption in Title 18, Division 1 of the California Code of Regulations. A public hearing on the proposed regulation will be held in Room 121, 450 N Street, Sacramento, at 9:30 a.m., or as soon thereafter as the matter may be heard, on March 23, 2004. Any person interested may present statements or arguments orally at that time and place. Written statements or arguments will be considered by the Board if received by March 23, 2004.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The State Board of Equalization proposes to adopt Rule 136 to interpret and clarify that organizations eligible for the welfare exemption from property taxation include nonprofit tax-exempt limited liability companies wholly owned by qualified organizations and meeting all the exemption law requirements in section 214 et. seq. The proposed rule is in response to a petition for regulatory action pursuant to Government Code section 11340.6, requesting that the Board of Equalization exercise its rulemaking authority to adopt a regulation that would clarify that a nonprofit tax-exempt limited liability company meeting all the requirements for exemption is an organization eligible to claim the welfare exemption on its property.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS

The State Board of Equalization has determined that proposed Rule 136 does not impose a mandate on local agencies or school districts. Further, the Board has determined that the proposed rule will not result in direct or indirect costs or savings to any State agency, any costs to local agencies or school districts that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, or other non-discretionary costs or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

EFFECT ON BUSINESS

Pursuant to Government Code section 11346.5 (a)(8), the Board of Equalization makes an initial determination that the adoption of Rule 136 will not have a significant statewide adverse economic impact directly affecting business because the proposed rule merely interprets and clarifies existing statutory provisions.

The proposed rule will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

The adoption of the proposed rule will not be detrimental to California businesses in competing with businesses in other states.

The proposed rule will not affect small business because the new rule only interprets and clarifies property tax exemption law statutory provisions and does not impose any additional compliance or reporting requirements on taxpayers.

COST IMPACT ON PRIVATE PERSONS OR BUSINESSES

There will be no adverse economic impact on private businesses or persons because the adoption of the proposed rule interprets and make specific existing statutory law and does not impose any additional compliance or reporting requirements on private persons or businesses.

SIGNIFICANT EFFECT ON HOUSING COSTS

No significant effect.

FEDERAL REGULATIONS

Rule 136 has no comparable Federal regulations.

AUTHORITY

Government Code section 15606, subdivision (c).

REFERENCE

Sections 214 et seq. of the Revenue and Taxation Code; Article XIII, Sections 4(b) and 5, California Constitution.

CONTACT

Questions regarding the substance of the proposed rule should be directed to: Ms. Mary Ann Alonzo, Senior Tax Counsel, at the State Board of Equalization, P.O. Box 942879, 450 N Street, MIC:82, Sacramento, CA 94279-0082. Telephone: (916) 324-1392; FAX (916) 323-3387, e-mail MaryAnn.Alonzo@boe.ca.gov.

Written comments for the Board's consideration, requests to present testimony, bring witnesses to the public hearing and inquiries concerning the proposed administrative action should be directed to Ms. Diane Olson, Regulations Coordinator, telephone (916) 322-9569, fax (916) 324-3984, e-mail Diane.Olson@boe.ca.gov or Ms. Joann Richmond, Property Taxes Analyst, telephone (916) 322-1931, e-mail Joann.Richmond@boe.ca.gov or by mail to the State Board of Equalization, Attn: Diane Olson or Joan Richmond, MIC: 80, P.O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080.

ALTERNATIVES CONSIDERED

The Board must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which this action is proposed, or be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an initial statement of reasons and an underscored version (express terms) of the proposed rule. Those documents and all information on which the proposal is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. Requests for copies should be addressed to Ms. Diane Olson, Regulations Coordinator, (916) 322-9569, at P. O. Box 942879, 450 N Street, MIC:80, Sacramento, CA 94279-0080. The express terms of the proposed regulation (rule) are available on the Internet at the Board's website <http://www.boe.ca.gov>.

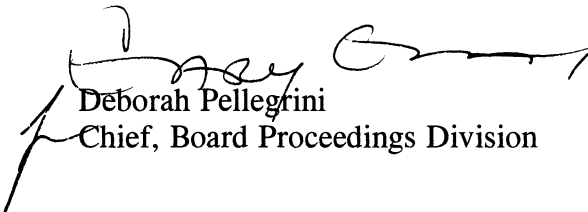
AVAILABILITY OF FINAL STATEMENT OF REASONS

The final statement of reasons will be made available on the Internet at the Board's web site following its public hearing of the adoption of the proposed rule. It is also available for public inspection at 450 N Street, Sacramento, California.

ADDITIONAL COMMENTS

Following the hearing, the State Board of Equalization may, in accordance with law, adopt the proposed rule if the text remains substantially the same as described in the text originally made available to the public. If the State Board of Equalization makes modifications which are substantially related to the originally proposed text, the Board will make the modified text, with the changes clearly indicated, available to the public for fifteen days before adoption of the regulation. The text of the modified rule will be mailed to those interested parties who commented on the proposed regulatory action orally or in writing or who asked to be informed of such changes. The modified rule will be available to the public from Ms. Olson. The State Board of Equalization will consider written comments on the modified rule for fifteen days after the date on which the modified rule is made available to the public.

STATE BOARD OF EQUALIZATION



Deborah Pellegrini
Chief, Board Proceedings Division

DP:dgo
Attachments

RULE 136 LIMITED LIABILITY COMPANIES AS QUALIFYING ORGANIZATIONS FOR THE WELFARE EXEMPTION

(a) A limited liability company may be a qualifying entity for welfare exemption purposes, if it is wholly owned by a qualifying organization or organizations and if it meets specific organizational and operating requirements.

(b) Qualifying Organization. A qualifying organization is an organization that is exempt under section 501(c)(3) of the Internal Revenue Code or under section 23701d of the Revenue and Taxation Code and that qualifies for exemption under section 214 of the Revenue and Taxation Code. A limited liability company is a qualifying organization if all its owner organization(s) (referred to as members) are exempt under section 501(c)(3) of the Internal Revenue Code or under section 23701d of the Revenue and Taxation Code and qualify for exemption under section 214 of the Revenue and Taxation Code. Each member shall have a valid, unrevoked letter from the Internal Revenue Service or the Franchise Tax Board, stating that it qualifies as an exempt organization under section 501(c)(3) of the Internal Revenue Code or under section 23701d of the Revenue and Taxation Code.

(c) Organizational Requirements. A limited liability company wholly owned by qualifying organization(s) may satisfy the organizational requirements for purposes of the exemption, if its articles of organization or the equivalent legally recognized formative document under the laws of the jurisdiction where the entity is formed meets all of the following requirements:

- (1) A specific statement shall be included which limits the activities of the limited liability company to one or more exempt purposes, as specified in section 214. This requirement may be satisfied by a clause stating that the limited liability company is organized and operated exclusively for one or more exempt purpose(s) as specified in section 214 [religious, hospital, scientific or charitable].
- (2) The organizational language shall specify that the limited liability company is operated exclusively to further the exempt purpose(s) as specified in section 214, of its member(s).
- (3) The organizational language shall require that each member of the limited liability company be a qualifying organization under section 214 and exempt under section 501(c)(3) of the Internal Revenue Code or section 23701d of the Revenue and Taxation Code.
- (4) The organizational language shall prohibit any direct or indirect transfer of any membership interest in the limited liability company to any nonqualified person or entity.
- (5) The organizational language shall provide an acceptable dedication clause. This requirement may be satisfied by a clause that irrevocably dedicates the property to one or more of the exempt purposes, as specified in sections 214 and 214.01.

- (6) The organizational language shall provide an acceptable dissolution clause. This requirement may be satisfied by a clause, which specifies that upon dissolution, all assets shall be distributed to an organization(s) organized and operated exclusively for exempt purposes, as specified in section 214, and which has established its tax exempt status under section 501(c)(3) of the Internal Revenue Code, or under section 23701d of the Revenue and Taxation Code.
- (7) The organizational language shall require that any amendments to the limited liability company's articles of organization or the equivalent legally recognized formative document under the laws of the jurisdiction where the entity is formed and to the operating agreement, be consistent with section 214.
- (8) The organizational language shall prohibit the limited liability company from merging with, or converting into, a for-profit entity.
- (9) The organizational language shall require that the limited liability company not distribute any assets to members who cease to be organizations described in section 214.
- (d) The limited liability company shall represent that its articles of organization are consistent with state law governing limited liability companies and are enforceable at law and in equity.
- (e) Operating Requirements. A limited liability company wholly owned by qualifying organization(s) may satisfy the operational requirements for purposes of this exemption, by operating in accordance with its articles of organization or the equivalent legally recognized formative document under the laws of the jurisdiction where the entity is formed.
- (f) The limited liability company shall file with the county assessor, duplicate copies of certified Articles of Organization or the equivalent legally recognized formative document required under the laws of the jurisdiction where the entity is formed, and any certified amendments and restatements.
- (g) In the event that a member of the limited liability company ceases to be a qualifying welfare organization, as described in section 214, the limited liability company shall report this information to the assessor and the Board no later than the next annual filing deadline for the welfare exemption. Such event will serve to disqualify the limited liability company and its property from the welfare exemption.

Authority: Section 15606(c), Government Code.

Reference: Sections 214, 214.01, 214.02, 214.1, 214.2, 214.5, 214.8, 214.14 254, 254.5, 254.6, 255, 261, 270, 271, 75.21 and 75.22 of the Revenue and Taxation Code; Article XIII, Sections 4(b) and 5, California Constitution.

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INITIAL STATEMENT OF REASONS/NON-CONTROLLING SUMMARY

Property Tax Rule 136, Limited Liability Companies as Qualifying Organizations for the Welfare Exemption

Specific Purpose

Proposed Rule 136 interprets and clarifies that organizations eligible for the welfare exemption from property taxation, “community chests, funds, foundations or corporations,” also include nonprofit tax-exempt limited liability companies wholly owned by one or more of those qualified entities and meeting all the exemption requirements. (Revenue and Taxation Code, section 214, subd. (a).)¹ Proposed Rule 136 is necessary to define the organizational and operational requirements of a limited liability company eligible to claim the welfare exemption from property taxation on its property.

Rule 136 interprets sections 214, 214.01, 214.02, 214.5, 214.8, 214.14, 254, 254.5, 254.6, 255, 261, 270, and 271 of the Revenue and Taxation Code and sections 4(b) and 5 of Article XIII of the California Constitution.² The rule ensures that only limited liability companies satisfying all the requirements for the exemption from property taxation are eligible to receive the welfare exemption on their properties.

Section 214 is the primary welfare exemption statute implementing the aforementioned constitutional provisions. Section 214 provides that property used exclusively for religious, hospital, scientific or charitable purposes owned and operated by community chests, funds, foundations or corporations organized and operated for such purposes, is exempt from taxation if certain requirements are met. These entities were the types of nonprofit entities in existence when the voters approved the constitutional amendment in 1944 which authorized the welfare exemption, section 1c of former Article XIII,³ and also have been identified in section 214 since its enactment in 1945.

The welfare exemption from property taxation was readopted by the electorate in 1974, in substantially the same form, as section 4(b) of Article XIII of the California Constitution, but with more general language identifying the entities eligible for exemption. Section 4(b) of Article XIII, provides, in relevant part, that the Legislature may exempt from property taxation, “property used exclusively for religious, hospital, or charitable purposes and owned or held in trust by *corporations or other entities*” that meet certain requirements. The voters’ intent, in adopting the original Constitutional amendment [section 1c of former Article XIII] and section 4(b) of Article XIII was to allow exemption from property taxes to all nonprofit tax exempt organizations which met the requirements.

¹ All section references are to the Revenue and Taxation Code unless otherwise specified.

² Section 5 of Article XIII extends the exemption to buildings under construction, land required for their convenient use and equipment in them if the intended use would qualify the property for exemption.

³ Amendment No. 17, Taxation exemption of religious, hospital and charitable organizations.

Factual Basis

The proposed rule is in response to a petition for regulatory action pursuant to Government Code section 11340.6. The petition requested that the Board of Equalization exercise its rulemaking authority to adopt a regulation that would clarify that nonprofit tax-exempt limited liability companies wholly owned by qualifying entities, as specified in section 214, subd. (a), and meeting exemption requirements are eligible to claim the welfare exemption on their property. On October 15, 2003, the Board of Equalization approved publication of the proposed rule, and a public hearing date of March 23, 2004 has been scheduled.

The Board also approved sponsoring legislation to amend section 214 to clarify that limited liability companies may qualify for the exemption, consistent with section 4(b) of Article XIII of the California Constitution, which references “other entities” as eligible for the exemption. The proposed amendment of section 214 to expressly include limited liability companies would update the statutory provision and achieve consistency with voter intent in their adoption of both section 4(b) and the original constitutional amendment. While the Board’s authority to adopt the proposed rule is not dependent on the enactment of the legislation to amend section 214, the legislation would be consistent with existing statutory language identifying legal entities eligible for the exemption.

Subsection (a) of proposed Rule 136 interprets and clarifies that organizations identified in section 214, subd. (a), as eligible for the welfare exemption, “community chests, funds, foundations or corporations,” also include nonprofit tax-exempt limited liability companies wholly owned by one or more of those entities and meeting certain requirements.

Subsection (b) specifies the requirements of section 214 and section 4(b) of Article XIII, that organizations eligible for the welfare exemption must be nonprofit and exempt from federal income tax or state franchise and income tax. The provision indicates that the nonprofit organizations that own the limited liability company must be qualified for the welfare exemption, must be tax exempt, and their tax exempt status must be verifiable through a letter from the Internal Revenue Service or Franchise Tax Board.

Subsection (c) specifies the language requirements for the articles of organization of the limited liability company, or the equivalent legally recognized formative document, to ensure that the entity is organized consistent with the requirements of section 214.

Subsection (d) requires the limited liability company to state that its articles of organization are consistent with state law and are legally enforceable.

Subsection (e) indicates that the limited liability company may satisfy the operational requirements by operating in accordance with its articles of organization or its formative document. This provision clarifies and interprets the provisions of section 214, subd. (a), which requires organizations to be operated for one or more of the specified exempt purposes, religious, hospital, scientific or charitable.

Subsection (f) requires the limited liability company to file with the county assessor duplicate copies of certified articles of organization or the equivalent legally recognized formative document.

Subsection (g) requires the limited liability company to report to both the assessor and the Board if any member or owner of this entity ceases to be qualified for the exemption. The provision states that if this occurs, the limited liability company and its property will be disqualified from the welfare exemption.